IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

SUMMARY SUIT NO.2160 OF 2005

Thomas Cook (India) Ltd. ..Plaintiff.
Vs.
Altaf Mohammed Abid Makhiawala ..Defendant.

....

Mr. Kunal Dawle with Mr Abhijeet Marathe i/b Udwadia & Udeshi for the Plaintiff.
None for the Defendant.

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CORAM: **DR. D.Y. CHANDRACHUD, J.**

30th April, 2007.

P.C. :

1. On 1st September, 2004 the Defendant was employed as an Executive Trainee with the Plaintiff. Clause 17 of the order of appointment required the Defendant to execute an undertaking agreeing to serve the Plaintiff for a period of two years from the date of his appointment, inclusive of the period of training. Accordingly, the Defendant executed an undertaking by which he undertook to complete the training for a period of six months and upon the

completion thereof to accept employment if offered for a minimum period of two years. By Clause 5 of the undertaking the Defendant agreed to pay to the Plaintiff on demand a sum of Rs.50,000/- in the event that he committed a breach of the obligations under the undertaking inter alia for the continuance in employment for a period of two years from the date of joining. On 9th March, 2005 a substantive appointment was offered to the Defendant with effect from 14th March, 2005. On 26th April, 2005 the Defendant resigned from service upon which the undertaking was invoked.

2. The Defendant has remained absent despite service of the writ of summons. An affidavit of service has been filed. A compilation of the original documents has also been filed on the basis of which the claim is established. The claim in the suit falls within the purview of Order 37 of the Code of Civil Procedure. The suit is accordingly decreed in terms of prayer clause (a) subject to the modification that the Plaintiff will be entitled to interest at the rate of 9% per annum from the date of the institution of the suit until the date

of the decree and at the same rate from the date of the decree until payment or realization.

Refund of Court Fees, if any, as per rules.

Counsel appearing for the Plaintiff would be at liberty to take back the originals upon furnishing a photocopy of the original documents which shall be verified by the registry before returning the originals.